

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

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v.

CRIMINAL NO. 4:18-CR-575
(HUGHES)

JACK STEPHEN PURSLEY,
AKA STEVE PURSLEY,
Defendant.

**UNITED STATES' OPPOSITION TO PURSLEY'S MOTION TO SUBSTITUTE
COUNSEL AND FOR A CONTINUANCE**

Pursley has a qualified right to the counsel of his choosing; however, “[t]he freedom to have counsel of one’s own choosing may not be used for purposes of delay.” *United States v. Uptain*, 531 F.2d 1281, 1290 (5th Cir. 1976). “Last minute requests are disfavored.” *United States v. Silva*, 611 F.2d 78 (5th Cir. 1980); *see also United States v. Sexton*, 473 F.2d 512 (5th Cir. 1973).

The government is prepared to try its case on June 18, 2019. It has already made arrangements to bring one witness all the way from Brazil for trial, and several other witnesses are traveling to Houston from out-of-town and out-of-state. After the parties’ June 10 pretrial conference and throughout today, counsel for the United States has been working in good faith with Mr. Pursley’s entire defense team – Mr. Minns, Ms. Arnett, and Mr. Vital – to find common ground on the Smith video deposition excerpts and to draft the neutral ‘cast of characters’ requested by the Court.

The United States is not privy to the facts or circumstances that have led to Pursley’s decision to swap attorneys at the last minute. However, there was no indication during the June 10 pretrial conference (or in the weeks leading up to it) that Mr. Minns or Ms. Arnett were not

prepared for trial. In short, there has been no allegation that Ms. Minns and Ms. Arnett are not capable of representing Pursley next week.

On the other hand, the Court has sufficient facts before it to find that Pursley's motion is being made for the purposes of delay, and that the effect of the substitution of counsel would be delay. *See United States v. Smith*, 895 F.3d 410 (5th Cir. July 13, 2018). Pursley opposed any continuance of trial at the November 19, 2019 pretrial conference, and he moved to dismiss the Indictment on the grounds of a Speedy Trial Act violation. The Court can consider Pursley's sudden change of heart as evidence of an ulterior motive: delay.

Mr. Vital has asked the Court for at least 30 days to prepare, which is itself evidence that the substitution of counsel motion will have the *effect* of delaying trial. *See Smith*, 895 F.3d at 410. More importantly, it is unclear to the United States whether Mr. Vital could, in fact, prepare for trial in only 30 days. Pursley's other attorneys received tens of thousands of pages of discovery, and the government's trial exhibits alone are contained in a set of eighteen three-inch binders.

Finally, the government notes that if Mr. Vital can represent to the Court that he can and will be prepared to try the case as lead counsel on June 18, Fifth Circuit precedent would require the Court to permit the substitution. *See United States v. Pollani*, 146 F.3d 269 (5th Cir. 1998). Nonetheless, if it is Pursley's decision to have Mr. Vital represent him, even if it means proceeding to trial as scheduled, the United States would respectfully request that the Court conduct an inquiry of Pursley – outside the presence of counsel for the United States – to ensure that he is fully apprised of the risks of doing so.

Conclusion

If granting the motion for substitution will result in a delay of trial, the United States asks the Court to deny Pursley's motion to substitute counsel.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will serve a copy of this document on all counsel of record.



Sean Beaty
Trial Attorney, Tax Division